

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

April 23, 2012

Demaris H. Walker  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, Delaware 19977

**RE: *State of Delaware v. Demaris H. Walker***  
**DEF. ID #0203014277**

Date Submitted: December 29, 2011

Dear Mr. Walker:

This is my decision on your Second Motion for Postconviction Relief. You were convicted of three counts of Rape in the Second Degree and one count each of Burglary in the First Degree, Attempted Robbery in the First Degree, Theft of a Senior, and Conspiracy in the Second Degree. Your convictions arose out of your rape of 84-year-old Ruby Wilson on March 10, 2002. Wilson was home alone and getting ready for bed when she heard a knock on her door. She opened her front door slightly, allowing her to see your co-defendant, Carlton Harding, standing in front of her door, and you standing in front of her neighbor's door. You violently pushed Wilson's door open, causing her to fall to the floor. You and Harding then entered Wilson's apartment. You grabbed Wilson off the floor and dragged her into the bedroom, while Harding searched her apartment for money. You then instructed Harding to hold Wilson's legs apart while you raped her three times, the first time with your fingers, the second time with a water bottle, and the third time with a metal shaving cream can. After the rapes, Wilson managed to push the emergency call button on her walker. Upon

seeing this, you and Harding fled in Wilson's car. Harding eventually returned to Wilson's apartment to collect some things that you and he had left behind. The police were there and Harding confessed to the crimes at this time. Harding testified at your trial that you were with him and that you raped Wilson. The Delaware Supreme Court upheld your convictions in an Order dated December 18, 2003.<sup>1</sup> You filed your First Motion for Postconviction Relief on January 24, 2006. I denied it on December 20, 2006.<sup>2</sup> The Supreme Court affirmed my denial of your First Motion for Postconviction Relief.<sup>3</sup> You filed your Second Motion for Postconviction Relief on September 23, 2011.

You allege in your Second Motion for Postconviction Relief that (1) the police officers violated the "knock and announce" rule when they entered your apartment without announcing their presence, (2) the police officers questioned your minor sister without her mother or a "friendly adult" being present, (3) the prosecutor violated *Brady* by not disclosing to you that Wilson had changed her statements regarding what items had been taken from her apartment, (4) the Court erred by not inquiring more fully into the results of your mental health examinations, (5) the Court erred by not removing from the jury two jurors who knew something about one of the State's witnesses, (6) the Court erred by not dismissing your defense counsel for a conflict of interest, and (7) the Court erred by allowing the State to impermissibly comment on your alibi defense. You also allege that it was your attorney's fault for not addressing these matters, whether it be pre-trial, during the trial, and/or in your direct appeal.

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<sup>1</sup> 840 A.2d 642 (Table), 2003 WL 22998847 (Del. Dec. 18, 2003).

<sup>2</sup> 2006 WL 3851228 (Del. Super. Dec. 20, 2006).

<sup>3</sup> 935 A.2d 256 (Table), 2007 WL 2744920 (Del. Sept. 20, 2007).

You were represented during the trial and on direct appeal by John F. Brady, Esquire. The State was represented by James W. Adkins, Esquire, who is now retired. He was succeeded by Deputy Attorney General Paula T. Ryan. Both Brady and Ryan filed affidavits in response to your motion. I have concluded that, given the procedural hurdles that you face, it is not necessary to hold a hearing.

All of your claims are procedurally barred. You could have raised all of your claims except your claims of ineffective assistance of counsel in your direct appeal. You did not do that. You could have raised your claims of ineffective assistance of counsel in your First Motion for Postconviction Relief. You did not do that. You instead raised other claims of ineffective assistance of counsel, which I rejected. Thus, all of your claims, regardless of how you have characterized them, are barred by Superior Court Criminal Rule 61(i)(1)-(4).

Rule 61(i)(1) provides that a Motion for Postconviction Relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.<sup>4</sup> Your conviction became final on December 18, 2003. You filed your Second Motion for Postconviction Relief on September 23, 2011. The cutoff date for you to have filed a Motion for Postconviction Relief was December 18, 2006. You filed your Second Motion for Postconviction Relief almost five years too late. Therefore, your Second Motion for Postconviction Relief is barred by Superior Court Criminal Rule 61(i)(1). In order to avoid the procedural bar of Rule 61(i)(1), you must demonstrate

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<sup>4</sup> Superior Court Criminal Rule 61(i)(1). Prior to a change in Rule 61 that became effective on July 1, 2005, the time limit to file a Motion for Postconviction Relief was three years.

that the Court lacked jurisdiction or a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>5</sup> The “fundamental fairness exception” is a narrow one and has only been applied in limited circumstances.”<sup>6</sup> For example, the exception has been applied where the right relied upon was recognized for the first time after a direct appeal.<sup>7</sup> The “miscarriage of justice” exception is not limited to a claim that an innocent person has been convicted.<sup>8</sup> It may consist of a claim that there has been a mistaken waiver of important constitutional rights, such as a mistaken waiver of a right to trial, counsel, confrontation, etc. in exchange for a guilty plea.<sup>9</sup> At no point in your Second Motion for Postconviction Relief do you allege that the Court lacked jurisdiction or anything that might fall under the “fundamental fairness” or “miscarriage of justice” exceptions that would enable you to avoid the procedural bar of Rule 61(i)(1). Furthermore, you do not understand the procedural time bar. You argue that the one-year period to file a motion for postconviction relief started when the United States Supreme Court denied your Petition for Certiorari.<sup>10</sup> This is incorrect. Your conviction became final when the Delaware Supreme Court issued its mandate on December 18, 2003.<sup>11</sup> That is when the time for you to file a

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<sup>5</sup> Superior Court Criminal Rule 61(i)(5).

<sup>6</sup> *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992).

<sup>9</sup> *Id.*

<sup>10</sup> *Walker v. Phelps, et al.*, cert. denied, No. 10-5366 (Oct. 4, 2010).

<sup>11</sup> 840 A.2d 642 (Table), 2003 WL 22998847 (Del. Dec. 18, 2003).

Motion for Postconviction Relief began to run. It does not, as you argue, reset with each appeal or new filing. You allege that there was a “miscarriage of justice” because this Court twice denied your request for trial transcripts. This is an inaccurate statement of the facts. On April 3, 2003, prior to your direct appeal to the Delaware Supreme Court, I approved your motion for disbursement of funds for a copy of the transcript of the proceedings. After the Supreme Court denied your direct appeal, you petitioned this Court twice for another disbursement of funds for trial transcripts. I denied your request and instructed you to get copies of your trial transcripts from your attorney. Your attorney advised the Court that he had mailed the transcripts to you in the last week of August, 2005. This was well before you filed your First Motion for Postconviction Relief. There was no “miscarriage of justice” regarding the trial transcripts.

Rule 61(i)(2) provides that any ground for relief that was not asserted in a prior postconviction proceeding is thereafter barred. In order to avoid the procedural bar of Rule 61(i)(2), you must demonstrate that the Court lacked jurisdiction or a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>12</sup> The procedural bar to Rule 61(i)(2) may also be overcome through the “interest of justice” exception. The “interest of justice” exception is a narrow one. In order to invoke the “interest of justice” exception, you must show that “subsequent legal developments have revealed that the trial court lacked the authority to convict or punish [you].”<sup>13</sup> A factual development may also trigger the

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<sup>12</sup> Superior Court Criminal Rule 61(i)(5).

<sup>13</sup> *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

“interest of justice” exception. For example, in *Weedon v. State*<sup>14</sup> several of the prosecutions witnesses recanted their statements, thereby defeating the presumption that Weedon’s Motion for Postconviction Relief was procedurally barred.<sup>15</sup> Again, you have not alleged any facts that would invoke either the “fundamental fairness” exception, the “miscarriage of justice” exception, or “interest of justice” exception that would entitle you to relief from the procedural bar of Rule 61(i)(2).

Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred. In order to overcome the procedural default of Rule 61(i)(3), you must show (1) cause for relief from the procedural default, and (2) prejudice from the violation of your rights. A showing of cause is not satisfied by showing merely that a claim was not raised. You must show that “some external impediment” prevented you from raising the claim.<sup>16</sup> To demonstrate ‘prejudice’ you must show that a “substantial likelihood” exists that if the issue had been raised on appeal, the outcome would have been different.<sup>17</sup> In order to avoid procedural default under Rule 61(i)(3), you must demonstrate both “cause” and “actual prejudice.”<sup>18</sup> You have not shown “cause” for why you did not previously raise your allegations in either your direct appeal to the Delaware Supreme Court or in your first Motion for Postconviction Relief. Therefore, you cannot overcome the procedural bar of Rule 61(i)(3). The allegation that you were entitled to another copy

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<sup>14</sup> 750 A.2d 521 (Del. 2000).

<sup>15</sup> *Id.* at 528.

<sup>16</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>17</sup> *Flamer v. State*, 585 A.2d 736, 748 (Del. 1990).

<sup>18</sup> *Blackwell v. State*, 736 A.2d 971 (Del. 1999).

of the trial transcripts at State expense does not provide you with any relief. You had the transcripts for your direct appeal and failed to raise the issues you now allege. For your First Motion for Postconviction Relief, I instructed you to obtain the transcripts from your attorney. As I noted previously, your attorney advised the Court that he had mailed the transcripts to you in the last week of August, 2005. This was well before you filed your First Motion for Postconviction Relief. Therefore, there is no reason why you could not have raised these issues in your First Motion for Postconviction Relief. You may also avoid the procedural bar of Rule 61(i)(3) if you can demonstrate that the Court lacked jurisdiction or a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>19</sup> Again, you have not alleged any facts that would invoke either the “fundamental fairness” exception or the “miscarriage of justice” exception that would entitle you to relief from the procedural bar of Rule 61(i)(3).

Rule 61(i)(4) provides that any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred. The procedural bar to Rule 61(i)(4) may be overcome through the “interest of justice” exception. Again, the “interest of justice” exception is a narrow one. You have not alleged any factual or legal developments that would invoke the “interest of justice” exception that would entitle you to relief from the procedural bar of Rule 61(i)(4).

You allege generally that your claims fall under one of the exceptions to the procedural bars, but you do not provide any substance as to how any of your claims could possibly invoke either the

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<sup>19</sup> Superior Court Criminal Rule 61(i)(5).

“interest of justice,” “miscarriage of justice” or “fundamental fairness” exceptions. Furthermore, all you have provided this Court with are empty assertions that you have “mistakenly waived” fundamental constitutional rights, but you do not state the constitutional rights that you waived, nor have you demonstrated one constitutional violation that led to the judgment of conviction. Quite simply, your claims are conclusory.

### **CONCLUSION**

Your Second Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

/s/ E. Scott Bradley

cc: Prothonotary  
Paula T. Ryan, Esquire  
John F. Brady, Esquire